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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,623	10/06/2001	Robert H. Cheyne III	0499-021B	5190
7590 Bradley N. Reben 463 First St Suite 5A Hoboken, NJ 07030			EXAMINER ROSE, ROBERT A	
			ART UNIT 3723	PAPER NUMBER
			MAIL DATE 09/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/972,623

Applicant(s)

CHEYNE, ROBERT H.

Examiner

Robert Rose

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. Receipt is acknowledged of Applicant's Amendment, filed March 28, 2005.
2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-9, and 12-19 of prior U.S. Patent No. 6,299,520. Claims 1-18 are deemed to be fully met by the claims of Applicant's U.S. Patent No. 6,299,520. This is a double patenting rejection.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cueman et al. Cueman et al disclose a non-absorbent antimicrobial surface comprising all of the subject matter set forth in Applicant's claims above. An antimicrobial agent is incorporated into a polymeric resin binder coating which is then cured on the substrate surface. At least some of the anti-microbial coating is deemed to be anchored in the thermoset polymeric coating forming the surface of the anti-microbial article.

6. Claims 1-4, 10-12, and 19-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hyman et al. Hyman et al disclose a non-absorbent antimicrobial surface comprising all of the subject matter set forth in Applicant's claims above. An antimicrobial agent is incorporated into a polymeric resin binder coating which is then cured on the substrate surface.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6-7, 14-15, 21, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Cueman et al or Hyman et al in view of Mori. Mori discloses a non-absorbent antimicrobial surface comprising an antimicrobial agent incorporated into a cured polymeric resin binder coating, which may be adhered to a substrate. Mori specifically discloses an antibacterial additive comprising the compound diiodomethyl-p-tolysulfone. To incorporate such a known antimicrobial compound into the resins of either Cueman et al or Hyman et al to cover a wider range of microbes would have been obvious in view of Mori.

9. Claims 8-9, 16-18, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hyman et al in view of Mori and further in view of Cameron. Hyman et al teach at column 11, lines 60-64 that combinations of antibacterial agents may be combined to cover a broader spectrum of organisms. Mori discloses an antibacterial polymeric binder comprising the compound diiodomethyl-p-tolysulfone. To incorporate a known antibacterial agent such as a sulfone into the resin binder of Hyman et al prior to curing to prevent the formation of bacteria or mildew in the pad during prolonged periods of non-use, within the spectrum covered by the sulfone compound, would have been obvious in view of Mori. Cameron discloses the known use of lauryl sulfate in a detergent pad formed of non-woven nylon fibers(column 5, line 18). To further incorporate a second known antibacterial agent such as lauryl sulfate into the binder of Hyman et al to prevent formation of bacteria during prolonged periods of non-use would

have been obvious in view of Cameron. Such use of plural agents would protect the ultimate user from a wider variety of bacteria which could otherwise grow in the pad during periods of non-use.

10. Applicant's arguments filed March 28, 2005 have been considered but they are not persuasive. Claims 1-9, and 12-19 of Applicant's U.S. Patent No. 6,299,520 fully anticipate the subject matter of claims 1-18. With regard to the limitation in claim 1, requiring that the antimicrobial agent be cured with the polymeric coating, this feature is deemed to be met by the disclosures of both Cueman et al and Hyman et al, each of which disclose cured polymeric coatings having antibacterial agents. While Applicant has amended the claims to include a limitation that the anti-microbial compound is present when the coating is cured on the substrate to prevent migration, this step is performed in both Cueman et al and Hyman et al, and would be expected to perform in the same manner as Applicant's surface.

11. In view of the new grounds of rejection not necessitated by Applicant's response, this action is not made final.

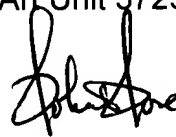
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Rose whose telephone number is (703) 308-1360. The examiner can normally be reached on Monday through Thursday, and on alternate Fridays, from 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail, can be reached at (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Rose
Primary Examiner
Art Unit 3723

A handwritten signature in black ink, appearing to read 'Robert Rose', is positioned below the printed name and title.

Rr

September 14, 2007.